United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

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In The

UNITED STATES COURT OF APPEALS

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

WILLIAM R. GOODJOIN,

Defendant-Appellant.

On Appeal from a Judgment of the United States District Court for the Southern District of New York

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APPELLANT'S BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 76-1170

UNITED STATES OF AMERICA,

Appellee,

-against-

WILLIAM R. GOODJOIN,

Defendant-Appellant.

DEFENDANT-APPELLANT'S BRIEF

Preliminary Statement

Defendant William R. Goodjoin appeals from a judgment of conviction entered following a jury verdict of guilty on one of two counts of an Information charging him with uttering forged government checks in violation of 18 U.S.C. §495. He was sentenced to a prison term of up to eighteen months pursuant to 18 U.S.C. §4208(a)(2).* (5A)**

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* Following a motion pursuant to Rule 36 of the Federal Rules of Criminal Procedure, the original sentence was corrected to read "up to 18 months pursuant to Title 18 U.S. Code Section 4082 (a)(2)" rather than merely "eighteen [18] months".

** References are to the Appendix.

ISSUES PRESENTED FOR REVIEW

1. Was the evidence introduced at trial sufficient to sustain a finding that the defendant had knowledge that the endorsement on the government checks involved in Count Two of the Information was false, forged and counterfeited at the time he cashed said check by depositing it into his savings account.

2. Did the trial judge abuse his discretion in finding that the statement signed by the defendant on February 7, 1975 was voluntarily given and in thereafter admitting said statement into evidence.

STATEMENT OF THE CASE

The Information

The Information (3A) charged the defendant with knowingly uttering two forged government checks, one in the amount of $1,286.70 on July 5, 1974 (Count One) and the other in the amount of $620 on October 9, 1974 (Count Two).

As discussed in more detail below, it was not disputed at trial that the defendant did in fact cash the two checks involved. The only real question presented to the jury was whether the defendant knew at the time that the endorsements contained thereon had been forged. The government's only evidence on this issue was a statement given by the defendant on February 7, 1975,* a statement which was demonstrated to be factually incorrect in numerous respects but which the trial judge refused to suppress.

The jury, after a two day trial, acquitted the defendant on the first count - relating to the $1,286 check - but found him guilty on the second count relating to the $620 check. It is the defendant's contention that the February 7, 1975 statement does not contain any evidence on the question of his alleged knowledge of the forged endorsement on the $625 check

* The statement was received as Government Exhibit 2 at the suppression hearing and as Government Exhibit 12 at the trial. It may be found at pages 145A-147A of the Appendix.

when it was uttered by him and that, therefore, the evidence is insufficient to sustain the verdict. (See Point I, infra)

The Motion to Suppress

As noted, the primary evidence presented by the government at trial was the statement given by the defendant approximately four months prior to his arrest (145A-147A) Prior to trial the defendant moved to suppress this statement upon the ground that it was not given voluntarily. The factual basis for the motion was that the defendant, who was an alcoholic, was intoxicated at the time the statement was extracted from him. The trial judge, after holding an evidentiary hearing four days prior to the trial, denied the motion (80A-86A) and subsequently permitted the statement to be received into evidence. It is defendant's position that in denying the motion to suppress the trial judge abused his discretion. (See Point II, infra)

The Circumstances Surrounding
The February 7, 1975 Statement

It was never disputed, either at the December 18, 1975 suppression hearing or at the trial, that the government became aware of the defendant's involvement with the two stolen checks referred to in the indictment and of the stolen check cashing ring operating in the Veteran's Administration Hospital in the Bronx through a call from the defendant to the Secret Service Department in early February 1975. Thus, according to two of

the Secret Service agents who testified at the suppression hearing, the defendant called Agent Marquez and volunteered that he had some information about stolen government checks (7A, 72A). Arrangements were made to meet the defendant at Hickey's Bar (73A). When the agents arrived at the bar on February 7, the defendant was sitting at the bar having a drink. (8A, 74A) Agent Hemmer testified at the suppression hearing that after speaking to the defendant briefly at the bar, they immediately took him to the Secret Service Office at which time he signed a standard written waiver and related certain information which was typed by Agent Hemmer in the form of a statement which was then shown to the defendant and signed by him. (8A-10A, 19A-21A)

Agent Hemmer's recollection of the events of February 7, proved to be very poor.* Later on in the suppression hearing, after the defendant had testified as to the events of February 7, Agent Marquez recalled that the defendant had not been taken back to the Secret Service Office immediately following the meeting in the bar. (74A-76A) Rather, consistent with the defendant's testimony, Agent Marquez testified that following the meeting at the bar, the defendant agreed to assist the government in its attempt to obtain evidence on the persons

* Understandably the government chose not to call Agent Hemmer at the trial but, rather, relied upon the testimony of Agent Marquez, whose memory had been refreshed by the testimony of the defendant prior to his testifying at the suppression hearing.

who apparently had stolen the checks involved. (75A)* Therefore, the agents proceeded with the defendant to the Veterans Administration Hospital in the Bronx where the defendant was outfitted with an electronic device and sent into the hospital in an attempt to make contact with the person who had given him the check. (34A-35A, 74A-76A) These endeavors were not successful and only then did the agents take the defendant to the office and extract the statement from him. (36A, 76A)

Despite the fact that they had picked up the defendant in a bar and despite the fact that, during the course of questioning the defendant, Agent Hemmer recalled a prior encounter with him while he was in a very inebriated state (12A-14A), both Agent Hemmer and Agent Marquez admitted that they made no inquiry into the amount of alcohol the defendant had consumed on February 7. (18A, 21A, 22A, 78A) Indeed, although the two agents' testimony differed somewhat, it does not appear that any question was raised with respect to defendant's alcoholic problem until after he had given the statement and that this inquiry was precipitated by the defendant's request that the agents make a stop at a liquor store while they were driving him home. (77A) The agents agreed and the

* Between the time that Agent Hemmer testified as to his recollection of the events of February 7, and the time that Agent Marquez testified, Agent Marquez had refreshed his recollection by reviewing certain documents in his files. (79A)

defendant upon purchasing a bottle in the liquor store, immediately opened it and proceeded to drink from it. (39A-40A). It was then that the agents asked the defendant about his drinking habits. (21A-22A)

In the end, the defendant's testimony with respect to his dealings with the Secret Service Agents on February 7 was fully corroborated by the agents although, as noted, their recollection as to the events was refreshed by the defendant's own testimony. Of course, the agents could not corroborate the defendant's testimony as to how much alcohol he had consumed on February 7 or his mental state at the time he gave the statement. Agent Hemmer and Marquez merely testified that, from their personal observation of the defendant on February 7, he appeared to be in complete control of his faculties. (11A, 77A) The defendant, on the other hand, testified that he had been drinking on February 7 from the time he woke up at approximately 7 a.m. until the time he was met in the bar by the agents, (26A-33A) and that, although he conceded the authenticity of his signature on the waiver form and statement, he could not recall signing those documents and could not recall any details of the discussion he had with the agents leading up to the preparation of the statement. (36A-38A) Nor could he recall reading or signing the statement after it had been prepared. (38A-39A)

Moreover, it was stipulated by the government for the

purpose of the suppression hearing, based upon proffered testimony of one Daniel O'Leary who was the proprietor of a neighborhood tavern near the defendant's home and who knew the defendant for quite a number of years by reason of the defendant's frequenting his bar, that the defendant is capable of consuming a large amount of liquor without showing any outward appearance of intoxication and that the only real effect of liquor on the defendant is that he becomes very much open to suggestions and is very agreeable to anything anybody suggests. (87A-90A)

February 7, 1975
Statement

In ruling from the bench that the statement was voluntarily given by the defendant on February 7, the Court relied heavily upon the fact that the statement contained details which the Court reasoned the defendant could not have recalled had he been intoxicated. (81A) The Court, however, virtually ignored the fact that the statement also contained numerous discrepancies not only as compared with the defendant's testimony, which was not at all disputed in many significant respects, but also when compared with facts as to which there could be no dispute. Thus, although the trial judge had stated during the course of the suppression hearing that if the statement was shown to be "replete with errors, that would go to show that

[the defendant] was so intoxicated he didn't know what he was saying or doing" (41A)*, he ignored the showing that the statement was "replete with errors" and ruled that it had been given voluntarily.

In rendering its opinion the Court referred to the ability of the defendant "to make so detailed a statement which is accurate in so many respects". However, the only real details contained in the statement consisted of the approximate amount of the first check, i.e., $1,286, and the name of the payee, a Mr. Brewer.** A reading of the defendant's testimony shows that, contrary to the Trial Court's finding that there were significant consistencies between the defendant's testimony and the circumstances surrounding the cashing of the two checks (81A), defendant's testimony in this regard varied significantly from the details contained in the statement.

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* A little later in the hearing the Court also noted that "if, on the other hand this statement is loaded with errors that it doesn't fairly reflect what he has actually done earlier then it would tend to indicate just the opposite, that he was sufficiently intoxicated at the time he was interviewed by the agents, that his waiver of his Fifth Amendment rights was not voluntary and for that reason I think it is relevant". (43A)

** Although the Secret Service agents denied having access to any material in connection with the preparation of the February 7, 1975 statement other than the defendant's recollection, it was established at the suppression hearing that the payee of the $1,286 check had previously filed a claim with the government for the check. (23A-25A)

Examples of inaccuracies in the February 7, 1975 statement are numerous and well documented. For example, according to the statement, Mr. Goodjoin received the $1,286 check "on or about October, 1974". (145A) In fact, as the Information charges, this check was received and cashed by Mr. Goodjoin in July of 1974. The defendant, on cross-examination, testified as to the circumstances surrounding his cashing the $1,286 check which differed in many material respects from the facts recited on page 1 of the February 7, 1975 statement.* (47A-48A, 57A-61A) Indeed, the Assistant United States Attorney conceded that the testimony given by the defendant on cross examination was "completely at variance with the description he gives in the [first] paragraph" of the statement. (62A)

The statement contains references to additional Veterans Administration checks which the defendant supposedly received and cashed in December of 1974 and January of 1975. (146A) According to the statement, in December of 1974 the

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* The government's own witness at the trial did not at all confirm the facts set forth on the February 7, 1975 statement with respect to the circumstances surrounding the cashing of the $1,286 check. Thus, Michael Hickey, the owner of Hickey's Bar where the $1,286 check was cashed said nothing in his testimony about the allegedly phony telephone call referred to at page 1 of the February 7, 1975 statement. (98A-104A)

defendant received a check for "about $260.00" which he then cashed in O'Leary's Bar. It was established, however, that there was no such check cashed in O'Leary's Bar and the government never even sought to show that the defendant had cashed such a check. (89A-90A)

The details contained on the statement with respect to the Veterans Administration check "worth about $300" which the defendant supposedly received "on or about January of 1975" (146A) are even more amazing. The statement recites that the defendant deposited the proceeds of this check into his bank account at the Knickerbocker Savings and Loan as had been the case with the $620.00 check. However, the evidence, consisting of the defendant's bank book at the Knickerbocker Federal and Savings and Loan Association (148A-149A), showed that there had not been any such deposit and that, indeed, the last deposit made to the defendant's account at the Knickerbocker Bank was in October of 1974.*

Another glaring factual error is contained on page 3 of the statement (147A) which refers to the alleged February 7, 1975 meeting between the defendant and Dunn at the Veterans

* At the trial, a representative of the Knickerbocker Savings and Loan conceded that the defendant had only one account at the bank and the last transaction in that account took place in October of 1974.

Administration Hospital. It will be recalled that February 7 was the date that Secret Service Agents Marquez and Hemmer equipped the defendant with an electronic bug and sent him into the Veterans Administration Hospital in an attempt to obtain evidence on Dunn. Agent Marquez clearly testified at the suppression hearing that after spending approximately two hours in the Veterans Administration Hospital on February 7 the defendant advised the agents "that he had not met with Dunn". (76A) Yet on that same day, the agents had the defendant sign a statement in which he said that he did meet Dunn on February 7, 1975.

Similarly, the statement refers to an alleged meeting between the defendant and Dunn on February 6, 1975 in which the defendant supposedly called Dunn and inquired as to whether Dunn had any checks for the defendant to cash. (147A) February 6 was, according to Agent Marquez, the day the defendant called him and volunteered that he had information concerning stolen government checks. (72A-73A)

Finally, according to the statement, the defendant received the second check of "worth approximately $600.00" on or about "November of 1974". In fact, as shown by his bankbook (149A), the defendant cashed the second check in October of 1974 by depositing it into his savings account.

In view of the above, we respectfully suggest that the two "consistencies" relied upon by the trial judge i.e., the amount and payee of one of the checks, are wholly insignificant in view of the numerous inconsistencies between the statement and the facts as they were established. The trial judge conceded that a showing of such inconsistencies and errors would demonstrate that the defendant did not know what he was doing or saying on February 7 (41A, 43A). Yet when such a showing was made, the trial judge still found that the statement had been given voluntarily.

ARGUMENT

Defendant contends that the evidence presented at trial was insufficient to establish a critical element of the crime charged i.e., that he knew when he uttered the $620.00 check in October of 1974 that the endorsement contained thereon had been forged. Moreover, it is respectfully submitted that the trial judge, in refusing to suppress the February 7, 1975 statement, abused his discretion.

POINT I

NO EVIDENCE WAS OFFERED AT TRIAL TO ESTABLISH THAT DEFENDANT KNEW WHEN HE UTTERED THE CHECK IN OCTOBER OF 1974 THAT THE ENDORSEMENT CONTAINED THEREON HAD BEEN FORGED

Admittedly, in determining whether there is sufficient evidence to sustain a jury verdict the evidence must be viewed in the light more favorable to the government. United States v. Floyd, 496 F.2d 982 (2d Cir. 1974) cert den. 419 U.S., 1069 (1974); United States v. McCarthy, 473 F.2d 300 (2d Cir. 1972). However, after being so viewed, the evidence must still be such that a reasonable mind might fairly conclude guilt beyond a reasonable doubt. United States v. Freeman, 498 F.2d 569 (2d Cir. 1974). As discussed below, there is absolutely no evidence in the record from which one can reasonably conclude that the defendant knew the endorsement on the $620 check had been forged when he cashed it in October of 1974.

The evidence presented by the government on Count Two of the Information consisted of (1) the testimony of Thomas J. Berry, the payee of the check; (2) the testimony of Arthur Leis, an officer of the Knickerbocker Federal Savings and Loan Association and (3) the statement signed by the defendant or February 7, 1975. Mr. Berry's testimony went

only to the fact that he didn't sign the check, that the signature that appeared thereon was not his and that he didn't know the defendant.* (105A-107A) Mr. Leis merely testified that the defendant had cashed the $620 check by depositing it into his savings account after endorsing it with his own signature, and had withdrawn the proceeds a few days later. Since the defendant did not dispute any of these facts, the only real question for the jury was whether the defendant in fact knew that the checks had been stolen and the endorsements thereon forged at the time he cashed them. As to the $1,386.70 check involved in Count One, the jury obviously decided that the defendant did not know this. As to the $620 check the jury apparently concluded otherwise. However, the only evidence offered by the government on the issue of defendant's knowledge at the time he cashed the $620 check was the February 7, 1975 statement.

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* The defendant was willing to stipulate that both Mr. Brewer and Mr. Berry's signature had been forged. However, the government, apparently recognizing the impact these men, who were both paraplegics, would have upon the jury, rejected this offer and insisted upon calling both Mr. Brewer and Mr. Berry representing to the Court that these witnesses would also offer testimony "going to the question of knowledge" (94A). Of course, no attempt was made to elicit such testimony. (95A-97A, 105A-107A)

A careful reading of the February 7, 1975 statement, however, shows that there is no evidence whatever therein from which even an inference can be drawn that the defendant knew the $620 check contained a forged endorsement. The portion of the statement relating directly to the $620 check reads as follows:

> "On or about November, 1974, Eddie met me in the V.A. Hospital on W. Kingsbridge Rd., Bronx, N.Y., at which time he had in his possession a V.A. check worth approximately $600.00, which he asked me to cash. After several unsuccessful attempts to negotiate the check, I finally deposited in into my savings account at the Knickerbocker Savings and Loan on Boston Rd., Bronx, N.Y. When Eddie asked me about the check, I told him that the bank would not let me make a withdrawal on it until the check cleared five days later, however, I never gave Eddie any of the proceeds of this check and spent the entire amount my self. I also second endorsed this check in my own name when I deposited it, since the payee's name was already on the check when I got it from Eddie". (146A)

Thus the statement merely recites that the payee's name was already on the check when the defendant obtained it from Eddie. Although it says that the defendant did not give any of the proceeds of the check to Eddie, this has nothing to do with the issue whether or not the defendant knew the check contained a forged endorsement.

There is nothing else in the statement which at all supports a finding that the defendant knew that the $620 check had been stolen and that the payee's endorsement had been forged thereon. However, the government will undoubtedly point to the last paragraph of the statement which reads:

> "According to my knowledge, Dunn takes these checks from patients that have died or left the hospital. In addition, Dunn and I have an agreement that if I cash a check, I will receive 40% of the face value of the check while Dunn receives the remaining 60%".

However, as shown in the first page of the statement, Eddie and Dunn are two different persons and there was absolutely no evidence of any relationship between them. Therefore, the reference to Dunn in the last paragraph can in no way be read to cover defendant's knowledge at the time he received the $620 check from Eddie.

Moreover, there is nothing in the statement which indicates when defendant allegedly obtained the "knowledge" that Dunn was taking the checks from patients that died or left the hospital and nothing to indicate when the defendant allegedly entered into his "agreement" with Dunn. Indeed with respect to both the $1,286 check and $620 check it is clear that the payees were both alive and both residents of the V.A. Hospital at the time their checks were stolen. (95A-105A)

Surely, this alleged agreement, which would allegedly result in the defendant receiving 40% of the check and Dunn receiving the remaining 60% cannot be read to cover the $620 check received by the defendant from Eddie four months prior to the time he gave his statement and referred to an alleged agreement with Dunn.

In view of the above, it is respectfully submitted that there is no evidence whatever on the question of the defendant's knowledge of the false or forged endorsement on the $620 check at the time it was cashed. In the circumstances, the conviction cannot be sustained.

POINT II

THE TRIAL COURT'S DENIAL OF DEFENDANT'S MOTION TO SUPPRESS CONSTITUTED AN ABUSE OF DISCRETION

In Jackson v. Lenno, 378 U.S. 368 (1963), the Supreme Court stated:

> "It is now axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession, Rogers v. Richmond, 365 U.S. 534, and even though there is ample evidence aside from the confession to support the conviction. Malinski v. New York, 324 U.S. 401; Stroble v. California, 343 U.S. 181; Payne v. Arkansas, 356 U.S. 560. Equally clear is the defendant's

> constitutional right at some stage in the proceedings to object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession." (378 U.S. at 376-77)

In the instant case there can be no question that that the jury's guilty verdict was founded wholly on the confession. It was the only evidence submitted on the question of defendant's knowledge.

Defendant, for obvious reasons, attempted to have the February 7, 1975 statement suppressed. However, after holding a hearing, the trial judge ruled from the bench that the confession had been voluntarily given and, therefore, permitted the statement to be admitted into evidence. In view of the facts presented, however, it is respectfully submitted that the trial court's finding in this regard "is plainly untenable" (United States v. Gottfried, 165 F.2d 360, 367 (2d Cir. 1948) cert. den. 333 U.S., 860 (1948), and that the trial judge in so ruling clearly abused his discretion, thus warranting reversal of the conviction.

Although appellate tribunals have at times been hesitant to disturb a trial court's finding on the question of the voluntariness of a confession, it is clear that a decision should not be permitted to stand if there has been a

clear abuse of discretion. Oritz v. United States, 318 F.2d 450 (9th Cir. 1963); LaMoore v. United States, 180 F.2d 49 (9th Cir. 1950); Lewis v. United States, 74 F.2d 173 (9th Cir. 1934). And, the Supreme Court has not hesitated to strike down a conviction where it concluded, based upon its examination of the evidence that a confession was not the product of a meaningful act of volition and its use, therefore, was violative of the Due Process Clause of the Fourteenth Amendment. See Blackburn v. Alabama, 361 U.S. 199 (1960); Spano v. New York, 360 U.S. 315 (1959); Fikes v. Alabama, 352 U.S. 191 (1957).

Indeed, some of the facts considered by the court to be important in Blackburn are similar to the facts involved herein. For example, like the Secret Service Agents here, the Chief Deputy Sheriff in Blackburn testified that the defendant appeared normal when he gave the statement. The Blackburn court disregarded this evidence because there was no evidence "that these observed facts bore any relation to Blackburn's disease" (361 U.S. at 209). Here the evidence was that the defendant was an alcoholic and that he could consume large amounts of alcohol without displaying any outward appearance of being intoxicated. More importantly, it was undisputed that the defendant was very open to suggestions and very easily led after he had been drinking. (87A,90A) Yet the trial judge relied

heavily upon the personal observation of the Secret Service Agents with respect to defendant's appearance, speech and motor ability on February 7.

Also, like the instant case, the confession in Blackburn was composed by the law enforcement officer rather than by the defendant. There was no evidence that any attempt was made to take a statement in defendant's own words.

The facts and circumstances surrounding defendant's signing of the February 7, 1975 statement are detailed at pages 4-8 supra and will not be repeated here. The numerous factual errors and inconsistencies contained in the statement are likewise discussed at pages 8-13. It is respectfully suggested that, like the confession in Blackburn, these facts "clearly establish that the confession most probably was not the product of any meaningful act of volition" (361 U.S. at 211). Yet the trial judge, after conceding during the course of the hearing that such a showing of errors and inconsistencies would tend to show that the statement was not given voluntarily, erroneously concluded that there were "many significant consistencies" that required a finding that the statement had been given voluntarily. It is respectfully submitted that the trial judge's finding in this regard are, in light of the evidence presented, "plainly untenable". Said findings cannot, therefore, be permitted to stand.

CONCLUSION

For all the foregoing reasons the judgment of conviction entered by the District Court should be reversed with the direction that a judgment of acquittal be entered.

Respectfully Submitted,

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